

Fair Political Practices Commission
INTERNAL MEMORANDUM

To: Chairman Randolph and Commissioners Blair, Huguenin, Leidigh, and Remy

From: Andreas C. Rockas, Senior Commission Counsel, Legal Division
Luisa Menchaca, General Counsel

Subject: Prenotice Discussion of Proposed Amendment of Regulation 18402 – Requiring A Committee Controlled By, Or Primarily Formed To Support Or Oppose, A Candidate for Election Purposes To Include The Candidate’s Name In The Name Of His Or Her Committee.

Date: January 25, 2007

I. EXECUTIVE SUMMARY

This memorandum presents for prenotice discussion a proposed amendment to regulation 18402 of the Political Reform Act (“Act”).¹ Regulation 18402 directs, among other things, how committees shall be named in certain cases. Currently, there is no requirement in the Act that the name of a committee controlled by a candidate for purposes of the candidate’s election, or that the name of a committee primarily formed to support or oppose a candidate, contain the name of the candidate.

The proposed amendment to regulation 18402 would require inclusion of a candidate’s last name in the name of a committee: (1) controlled by, or (2) primarily formed to support or oppose, one or more candidates for purposes of the candidates’ election. Thus, whenever a committee’s identification is required by law, the two above-described types of committees would also have to disclose the last name of the candidate(s). The goal of the proposed amendment is to provide the public with more clarity as to who controls candidate committees by identifying the names of candidates in the names of such committees whenever the committee name is required to be disclosed by law. The need for such an amendment was identified by the Commission’s Technical Assistance Division (“TAD”).

For example, there is currently a law – section 84305 (commonly referred to as the “sender identification” statute) – mandating that committees disclose their names in mass mailings sent by them. Though section 84305(c) already requires candidate-controlled committees to disclose the names of candidates in their mass mailings, this is

¹ Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109 – 18997, of the California Code of Regulations. Further references to “section” are to the Government Code, and references to “regulation” are to title 2 of the California Code of Regulations, unless otherwise indicated.

not so in the case of non-candidate-controlled committees. The proposed amendment to regulation 18402 would have the effect of requiring a non-candidate-controlled committee, that is primarily formed to support or oppose a candidate, to disclose the last name(s) of the candidate(s) they support or oppose in their mass mailings.

II. BACKGROUND

The Commission has broad authority in determining the types of information persons, substantially engaged in local and state political activities in California, must disclose. (See sections 82013 [defining “committee”], 84101 [requiring recipient, or section 82013(a), committees to file statements of organization with the Secretary of State] and 84102 [what information shall be included in a committee’s statement of organization].) Any person or combination of persons that directly or indirectly receive political contributions totaling \$1,000 or more in a calendar year constitutes a “committee” under section 82013(a) and must disclose certain information to the public about its political activities. (*Ibid.*)

Among the various types of information the Act requires a committee to disclose to the public are “the full name . . . [of] any candidate . . . which the committee supports or opposes as its primary activity.” (Section 84102(d).) In the case of a committee controlled by a candidate, the Act mandates that the committee shall also disclose “the name of each candidate . . . by which it is controlled, or the name of any controlled committee with which it acts jointly.” (Section 84102(e).) Specifically, in the case of a committee controlled by a candidate for his or her election, the committee is even required to disclose to the public the name and address of the financial institution where the committee has established an account and the account number. (Section 84102(f).)

Finally, the Act requires political committees to disclose “[s]uch other information as shall be required by the rules or regulations of the Commission consistent with the purposes and provisions of [Chapter 4 of the Act].”² (Section 84102(g).)

In an effort to carry out the Act’s reporting provisions relating to committees, the Commission adopted (among other regulations) regulation 18402 concerning the naming of committees.³ Subdivision (c) of regulation 18402 currently states:

“(c) Whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization.

² Chapter 4 of the Act, entitled “Campaign Disclosure,” encompasses sections 84100 through 84511 and the regulations promulgated thereunder. This chapter of the Act is supported by, among other stated purposes contained in the Act, the electorate’s statement that “[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” (Section 81002(a).)

³ The statutory authority upon which regulation 18402 at least partially relies is section 84102 – the disclosure statute cited extensively in the discussion above.

“(1) In the case of a sponsored committee, the statement of organization shall include the name of the committee as provided in 2 Cal. Code Regs. section 18419.

“(2) For purposes of Government Code section 84504, in the case of a committee primarily formed to support or oppose a ballot measure, the committee name shall clearly identify the economic or other special interest of the committee’s major donors of \$50,000 or more.

“(A) If candidates or their controlled committees, as a group or individually are major contributors of \$50,000 or more, the primarily formed committee name shall include the controlling candidate’s name.

“(B) If the major donors of \$50,000 or more share a common employer, the identity of the employer shall also be disclosed in the name of the primarily formed committee.”

While section 84102 requires that the candidate’s full name be provided in the statement of organization, neither the statute nor subdivision (c) of regulation 18402 expressly require that a committee: (1) controlled by a candidate or candidates for purposes of the candidates’ election; or (2) primarily formed to support or oppose a candidate or candidates, include any part of the name of the candidate(s) in the name of the committee.

The proposed amendment would, for example, result in the disclosure of a candidate’s last name (in the case of the two, above-described types of committees) where disclosure of the names of such committees is required by law. Thus, for example, in mass mailings (see section 84305) sent by committees primarily formed to support or oppose candidate(s) for election purposes, the candidate’s last name would now have to be disclosed.

III. PROPOSED REGULATORY ACTION

In order to provide additional meaning and consistency to the Act’s disclosure regime (as reflected in section 84102 and other statutes) staff proposes adding a new numbered paragraph under subdivision (c) of regulation 18402. The proposal would renumber subdivision (c)(2) as (c)(3). New paragraph (c)(2) would read as follows:

“(c)(2) In the case of a committee controlled by, or primarily formed to support or oppose, one or more candidates for purposes of the candidates’ election, the committee name shall include the last name of the candidate or candidates. This subdivision shall apply to committees formed on or after July 1, 2007.”

The Act currently requires a committee to disclose to the public: the full name of any candidate that a committee supports or opposes as its primary activity; the name of

each candidate by which it is controlled, or the name of any controlled committee with which it acts jointly; and, in the specific case of a committee controlled by a candidate for his or her election, the name and address of the financial institution where the committee has established an account and the account number. (Section 84102, subdivisions (d), (e) & (f), respectively, and analysis in the “Background” section found above.)

In addition, as noted in the “Background” section above, subdivision (g) of section 84102 specifically grants the Commission authority to promulgate rules and regulations requiring public disclosure of information that is *not* specifically listed in the rest of the statute, but that would, in the determination of the Commission, further the purposes and provisions of Chapter 4 – titled “Campaign Disclosure” – of the Act. (Section 84102(g); see Chapter 4 of the Act, entitled “Campaign Disclosure,” at sections 84100 through 84511.) Subdivision (g) provides the Commission with a very powerful tool with which to craft a regulatory scheme that serves the purposes of the “Campaign Disclosure” mission of the Act.

Staff Recommendation

Staff recommends that the Commission approve the proposed amendments to regulation 18402 for adoption at its April meeting.

Attachment

Proposed Amendments to Regulation 18402.